

**REMARKS/ARGUMENTS**

Favorable reconsideration and allowance of the present application are requested in view of the following remarks.

**A. SUMMARY OF THIS AMENDMENT**

By the current amendment, Applicants basically:

1. Add new claims 17-28.
2. Respectfully traverse all prior art rejections.

**B. §102 REJECTION – ENDO ET AL.**

Claims 9, 11, 13 and 15 stand rejected under 35 U.S.C. § 102(b) as allegedly being rejected under Endo et al. (JP 2002-072662 A). *See Office Action, pages 2-3.* Applicants respectfully traverse.

For a § 102 rejection to be proper, the cited reference must teach or suggest each and every claimed element. *See MPEP 2131;MPEP 706.02.* Thus, if the cited reference fails to teach or suggest one or more elements, then the rejection is improper and must be withdrawn.

In this instance, Endo et al. fails to teach or suggest each and every claimed element. For example, independent claim 9 recites, in part “wherein said one end portion of said reflux plate is disposed above a fly peak point in a vertical direction of said one end portion of the developer provided by a rotation of said stirring roller.”

In the Office Action, it is alleged that the direction board 26 illustrated FIG. 1 of Endo et al. is equivalent to the reflux plate as claimed. It is further alleged that the bottom left portion of the direction board 26 is disposed above an area where the developer flies. From this, the Office Action reaches the conclusion that the above recited feature is disclosed in Endo et al.

Endo et al. makes no mention of a fly peak point whatsoever. The performance of the agitation paddle 21 (alleged to be equivalent to the stirring roller as claimed) is not described in Endo et al. other than to indicate that it circulates the developer. Endo et al. is completely silent whether the bottom left portion of the direction board 26 is disposed above the fly peak point of the developer. Thus, contrary to the Examiner's allegation, Endo et al. does not teach or suggest the feature of an end portion of a reflux plate being disposed above a fly peak point in a vertical direction of the end portion of the developer as recited in claim 9.

This alone is sufficient to distinguish independent claim 9 from Endo et al. But in addition, claim 9 recites, in part "wherein said one end portion of said reflux plate is disposed at a position where a plane passing through a rotation center axis of said stirring roller crosses said reflux plate at right angles." Fig. 5 of the present application, which illustrates a non-limiting embodiment of the relative positionings of the reflux plate 6 and the stirring roller 7, illustrates the concept.

In contrast, Endo et al. lacks any description regarding the relative angles between the direction board 26 and the agitation paddle 21. Apparently, the conclusion that Endo et al. shows the recited feature is shown is based on the drawing alone. However, it is well settled that when the reference does not disclose that the drawings are to scale and is silent as to dimensions, arguments based on the drawing features are of little value. *See MPEP 2125*. Thus, to the extent that the drawings alone were relied upon, the reliance is improper.

Yet further, claim 9 recites, in part “wherein an inclination angle of said reflux plate is larger than an angle of repose of the developer.” The Office Action recognizes that Endo et al. is silent regarding this issue. But, it is simply asserted that the inclination angle of the direction board 26 is required to be larger than the angle of repose the performed desired function of guiding surplus developer from the roller 23. In other words, the it is asserted that the feature is inherent.

It is well settled that the fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. In relying upon the theory of inherency, it must be demonstrated that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art. *See MPEP 2112*. This requirement is not met.

Lines 14-16 of paragraph [0015] of Endo et al. simply indicates that the direction of the developer is changed by the partitioning part 24c of the regulating board 24 (allegedly equivalent to the control member as claimed) and is supplied to the direction board 26. The developer flows through the upper surface of the direction board 26 and falls toward the carrying spiral 22, which is then moved towards the agitation paddle 21 to be recirculated. Thus, the goal is to recirculate the developer. Towards this goal, the direction board 26 having any inclination angle will facilitate this goal. Having the inclination angle being greater than the angle of repose is not an absolute requirement. Since this feature does not necessarily flow from the teachings of Endo et al., the theory of inherency cannot be properly be relied upon.

For at least the above stated reasons, independent claim 1 is distinguishable over Endo et al. Independent claim 13 recites similar features. Therefore, claim 13 is also distinguishable over Endo et al.

The following is also noted. IN the previous Office Action dated April 16, 2008, the same independent claims 9 and 13 were rejected as allegedly being anticipated by Kamezaki et al. (JP 63-271487 A). In the reply submitted May 29, 2008, Applicants demonstrated that Kamezaki et al. does not disclose the features of “wherein one end portion of said reflux plate is disposed above a fly peak point in a vertical direction of said one end portion of a developer provided by a rotation of said steering roller”, “wherein said one end portion of said reflux plate is disposed at a position where a plane passing through a rotation

center axis of said steering roller crosses said reflux plate at right angles” and “wherein an inclination angle of said reflux plate is larger than an angle of repose of developer.” In the present Office Action, the rejection based on Kamezaki et al. is withdrawn, and Endo et al. is cited in place of Kamezaki et al.

However, Endo et al. suffers from at least the same deficiencies of Kamezaki et al. There are no teachings or suggestions about the features “fly peak” and “inclination angle” as amply demonstrated above. It is also established that it is not inherent that the inclination angle is larger than the angle repose from the teachings of Endo et al. Since Endo et al. suffers from at least the same deficiencies as Kamezaki et al., the rejection based on Endo et al. should similarly be withdrawn.

Claims 11 and 15 depend from independent claims 9 and 13, respectively, and recite further distinguishing features. Accordingly, claims 11 and 15 are also distinguishable over Endo et al.

Applicants respectfully request that the rejection of claims 9, 11, 13 and 15 based on Endo et al. be withdrawn.

**C. §103 REJECTION – ENDO ET AL., KAWAI ET AL.**

Claims 10, 12, 14 and 16 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Endo et al. in view of Kawai et al. (JP 09-068869 A). *See Office Action, pages 3-4.* Applicants respectfully traverse.

These claims depend from independent claims 9 or 13, directly or indirectly, which have been demonstrated to be distinguishable over Endo et al. Kawai et al. does not correct the above noted deficiencies of Endo et al. Accordingly, independent claims 9 and 13 as distinguishable over the combination Endo et al. and Kawai et al. These dependent claims recite further distinguishing features. Accordingly, the dependent claims are also distinguishable over the combination of Endo et al. and Kawai et al.

Applicants respectfully request that the rejection of claims 10, 12, 14 and 16 based on Endo et al. and Kawai et al. be withdrawn.

#### **D. MISCELLANEOUS**

In view of the foregoing and other considerations, all claims are deemed in condition for allowance. A formal indication of allowability is earnestly solicited.

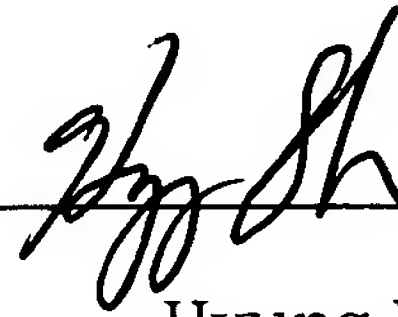
The Commissioner is authorized to charge the undersigned's deposit account #14-1140 in whatever amount is necessary for entry of these papers and the continued pendency of the captioned application.

Should the Examiner feel that an interview with the undersigned would facilitate allowance of this application, the Examiner is encouraged to contact the undersigned.

Respectfully submitted,

**NIXON & VANDERHYTE P.C.**

By: \_\_\_\_\_



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